

In lieu of litigating the merits of her claim in this forum, Plaintiff has filed a motion for reconsideration, again seeking to remand the case to state court. Doc. No. 12. Plaintiff challenges this Court's conclusion that she has no reasonable basis to recover against Mr. Aguilar in state court. *Id.* In her state court petition, Plaintiff alleged that Mr. Aguilar is individually liable for the lender's alleged failure to send notices of intent to accelerate. *See* Orig. Pet. at ¶ 9. In its order denying Plaintiff's motion to remand, this Court found that notice of intent to accelerate was mailed on or about October 14, 2013. Doc. No. 10. Recognizing that it is uncertain whether the duty to send notice of intent to accelerate extends to the trustee, the Court found that, because such a notice was in fact sent, Plaintiff could not expect to recover on this theory. *Id.*

In her motion to reconsider, Plaintiff admits that notice of intent to accelerate was mailed in October, 2013. Doc. No. 12 at 2. However, Plaintiff argues that she made a payment in response to this notice, and that by accepting this payment, the lender abandoned its acceleration. *Id.* According to Plaintiff, any further acceleration required a new notice of intent to accelerate. *Id.* ("That is to say, once [the bank] took the payment, the Plaintiffs get a do over on the notices"). Plaintiff is impliedly advancing a two-part legal argument that: (1) a new notice of intent to accelerate is always required after a borrower *accepts* a payment; and (2) the duty to provide a successive notice of intent to accelerate extends to the trustee. For the purposes of this motion, the Court need not take a position on this unsettled area of Texas property law.¹ In this case, the lender never actually accepted Plaintiff's attempted payments. This is evident from the face of Plaintiff's state court pleading. Therein, Plaintiff admits that her attempted payment was

¹ In fact, in conducting an improper joinder analysis, it is often inappropriate for a federal court whose jurisdiction is questioned to opine on unsettled questions of state law. Cf. *Minella v. Bank of Am., N.A.*, No. SA-14-CV-174, 2014 WL 1330554 (W.D. Tex. Apr. 1, 2014).

returned to her on November 22, 2013. *See* Orig. Pet. ¶ 6. Even assuming the accuracy of Plaintiff's legal arguments, it is difficult, if not impossible, to see how the bank could have "accepted" her payment when it was immediately returned. Thus, the factual underpinnings of Plaintiff's theory of the trustee's liability – that no effective notice of intent to accelerate was ever mailed – remains flawed. Consequently, the Court again finds that Mr. Aguilar was improperly joined and DENIES this motion to reconsider its previous order denying Plaintiff's motion to remand. Doc. No. 12.

Plaintiff has also filed a motion for leave to amend her petition, to re-add Mr. Aguilar as a Defendant. Doc. No. 11. In considering Plaintiff's motion to reconsider, the Court necessarily reaffirmed its prior finding that Plaintiff has no reasonable basis to recover against Mr. Aguilar. As a result, Plaintiff's proposed amendment would be "futile" and leave to amend is properly denied under Rule 15. *See Martin's Herend Imports, Inc. v. Diamond & Gem Trading U.S. Am. Co.*, 195 F.3d 765, 771 (5th Cir. 1999).

CONCLUSION

In light of the foregoing analysis, the motion to reconsider is hereby DENIED. Doc. No. 12. In addition, Plaintiff's motion for leave to amend is also DENIED. Doc. No. 11.

SIGNED this 23rd day of May, 2014.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', with a stylized flourish at the end.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE